

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Metro West Ambulance

Licensee of Station WQBI492  
Hillsboro, Oregon

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File Number: EB-07-PO-055

NAL/Acct. No.: 200732920004  
FRN: 0001592666

**FORFEITURE ORDER**

**Adopted: February 27, 2008**

**Released: March 3, 2008**

By the Regional Director, Western Region, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Forfeiture Order (“*Order*”), we issue a monetary forfeiture in the amount of three thousand, two hundred dollars (\$3,200) to Metro West Ambulance (“Metro West”), licensee of station WQBI492, in Hillsboro, Oregon, for willful and repeated violation of Section 1.903(a) of the Commission's Rules (“Rules”).<sup>1</sup> On June 11, 2007, the Enforcement Bureau’s Portland Resident Agent Office issued a Notice of Apparent Liability for Forfeiture (“*NAL*”) in the amount of \$4,000 to Metro West after determining that Metro West apparently willfully and repeatedly operated on 463.2875 MHz, a frequency not authorized by its license, WQBI492.<sup>2</sup> Metro West filed a response to the *NAL* on July 2, 2007 (“*Response*”). In this *Order*, we consider Metro West’s arguments that the violation was not willful and not repeated, that Metro West took immediate steps to rectify the situation as soon as it was aware of the violation, and that Metro West has a history of compliance with the Commission’s Rules.

**II. BACKGROUND**

2. On March 30, 2007, the Enforcement Bureau’s Portland Resident Agent Office (“Portland Office”) received a complaint against Metro West regarding its unlicensed operation on frequency 463.2875 MHz. In response to the complaint, a Portland Office agent monitored and recorded radio transmissions exchanged between Metro West’s ambulance vehicles and its dispatch center. When the agent interviewed Metro West personnel and a communications center manager about their use of frequency 463.2875 MHz, the Metro West representatives denied such use and affirmatively stated that Metro West was not operating on 463.2875 MHz. The representatives then provided the agent a copy of the WQBI492 license. The license showed that frequency 151.865 MHz was the only authorized frequency to Metro West on that license. The agent issued a verbal warning to Metro West representatives advising that a new authorization was required if Metro West wanted to use 463.2875 MHz. In its *Response*, however, Metro West disputes that the Portland agent verbally warned Metro West about its unauthorized operation on 463.2875 MHz.

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<sup>1</sup> 47 C.F.R. § 1.903(a).

<sup>2</sup> *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732900004 (Enf. Bur., Western Region, Portland Resident Agent Office, released June 11, 2007).

3. From April 4, 2007, to April 10, 2007, the Portland Office continued receiving complaints concerning Metro West's unlicensed operation on frequency 463.2875 MHz.

4. On April 17, 2007, the Portland agent used mobile radio direction finding techniques to locate an unauthorized transmitter on frequency 463.2875 MHz operated by Metro West in a communications site, managed by BEARCOM Communications, in Portland, Oregon. The agent telephoned the site manager and requested to inspect the station. The site owner agreed to meet the agent on April 20, 2007. Later on April 17, 2007, the Portland agent received a phone call from a representative of Metro West admitting that they were using frequency 463.2875 MHz without a license. In its *Response*, Metro West asserts this was the first time it realized it was in fact operating on 463.2875 MHz. The Metro West representative indicated that he would apply for a special temporary authorization ("STA") or a frequency coordination for use of frequency 463.2875 MHz and that he would send a copy of the a STA or frequency coordination approval as soon as he received the documents.

5. On April 18, 2007, the Portland agent monitored frequency 463.2875 MHz and observed that Metro West was still using the referenced frequency without a FCC authorization. The agent recorded Metro West's radio transmissions on April 18, 2007.

6. On April 20, 2007, the Portland agent received a fax copy of a frequency coordination approval indicating that Metro West had applied to operate on the new frequency 463.2375 MHz. The agent also received a voice mail message from a Metro West representative indicating that Metro West had vacated frequency 463.2875 MHz. The agent then met with a representative from BEARCOM Communications to inspect Metro West's transmitter and verified that Metro West had vacated frequency 463.2875 MHz.

7. On June 11, 2007, the Portland agent researched the Commission's databases and found that Metro West's authorization for use of frequency 463.2875 MHz, under call sign WQBC803, had expired on March 21, 2005.

8. On June 11, 2007, the Portland Office issued a *NAL* in the amount of \$4,000 to Metro West. In the *NAL*, the Portland Office found that Metro West apparently willfully and repeatedly violated Section 1.903(a) of the Rules<sup>3</sup> by operating on 463.2875 MHz, a frequency not authorized by its license, WQBI492. In its *Response*, Metro West disputes some of the facts recited in the *NAL*, argues that the violation was not willful and not repeated, that Metro West took immediate steps to rectify the situation as soon as it was aware of the violation, and that Metro West has a history of compliance with the Commission's Rules.

### III. DISCUSSION

9. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Act,<sup>4</sup> Section 1.80 of the Rules,<sup>5</sup> and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.<sup>6</sup> In examining the *Response*, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of

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<sup>3</sup> 47 C.F.R. § 1.903(a).

<sup>4</sup> 47 U.S.C. § 503(b).

<sup>5</sup> 47 C.F.R. § 1.80.

<sup>6</sup> 12 FCC Red 17087 (1997), *recon. denied*, 15 FCC Red 303 (1999).

culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.<sup>7</sup>

10. Section 1.903(a) of the Rules requires that stations in the Wireless Radio Services must be used and operated only in accordance with the rules applicable to their particular service, and with a valid authorization granted by the Commission. Metro West's authorization for use of frequency 463.2875 MHz, under call sign WQBC803, expired on March 21, 2005. The Metro West land mobile license, WQBI492, provided by Metro West representatives on March 30, 2007, did not include an authorization to operate on 463.2875 MHz in the Portland, Oregon area..

11. In its *Response*, Metro West states it did not receive a verbal warning from the Portland agent on March 30, 2007, and attaches to its *Response* a signed statement from an employee of Metro West stating that the only frequency mentioned by the Portland agent was 151.865 MHz. Metro West acknowledges in the *Response*, however, that the Portland agent did ask another Metro West employee, its Communications Center Manager, about Metro West's license for 463.2875 (which had expired) and the manager told the Portland agent that it was not using that frequency. Metro West argues that it had no knowledge that WQBI492 was operating on 463.2875, until it was alerted to this operation on April 17, 2007, by a communications company which had been contacted by the Portland agent to obtain access to the Metro West tower. Metro West states that the communications company then informed Metro West that WQBI492 was operating on 463.2875 MHz. Metro West states that it contacted the Portland agent on April 18, 2007, to clarify the information it had received from the communications company and again told the Portland agent it was not aware that WQBI492 was operating on 463.2875 MHz. Because of its lack of knowledge of its operation on 463.2875 MHz, Metro West argues that its operation cannot be considered willful. We disagree.

12. A licensee is required to operate on the frequency stated in its authorization.<sup>8</sup> Section 312(f)(1) of the Act,<sup>9</sup> which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...."<sup>10</sup> Metro West consciously and deliberately operated WQBI492. Additionally, Metro West acknowledges the Portland agent did talk to its Communications Center Manager about the use of 463.2875 MHz on March 30, 2007. Even if the manager did not understand this communication to be a warning, Metro West assured the Portland agent that WQBI492 was not operating on 463.2875 MHz, and Metro West took no action to ensure the accuracy of this statement, until more than two weeks later, when the Portland agent contacted another company about what appeared to be Metro West's operation on 463.2875 MHz. We find that Metro West was put on notice about its potential unauthorized use of 463.2875 MHz by the Portland agent on March 30, 2007, failed to ensure it was not operating on that frequency, and, consequently, continued operating on that frequency. Therefore, we find that Metro West willfully operated on a frequency not authorized by its license, WQBI492.

13. Metro West also argues that because it was not aware of its operations on 463.2875 MHz, and was not aware that a violation was occurring, its violation was not repeated. We disagree. Section 312(f)(2) of the Act defines "repeated" as "the commission or omission of such act more than once or, if

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<sup>7</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>8</sup> *Dominic DeNaples*, 19 FCC Rcd 12303 (EB 2004).

<sup>9</sup> 47 U.S.C. § 312(f)(1).

<sup>10</sup> See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

such commission or omission is continuous, for more than one day.”<sup>11</sup> In this case, the evidence is clear that Metro West operated WQBI492 on 463.2875 MHz for more than one day. Therefore, we find no merit to this argument.

14. Metro West also contends that it has a history of overall compliance with the Commission’s Rules. We have reviewed our records and we concur. Consequently, we reduce Metro West’s forfeiture amount from \$4,000 to \$3,200.

15. Metro West also argues that it immediately rectified the situation after it was made aware of the violation of April 17, 2007. That effort, however, was only made after the Portland agent had contacted the communications company for access to the Metro West radio tower, and the communications company then contacted Metro West. While we appreciate Metro West’s efforts, the Commission has consistently held that a licensee is expected to correct errors when they are brought to the licensee’s attention by the Commission staff and that such correction is not grounds for a downward adjustment in the forfeiture.<sup>12</sup> Therefore, we find no merit to this argument.

16. We have examined the *Response* to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Metro West willfully and repeatedly violated Section 1.903(a) of the Rules. Considering the entire record and the factors listed above, we find that reduction of the proposed forfeiture to \$3,200 is warranted.

#### IV. ORDERING CLAUSES

17. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended (“Act”), and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Metro West Ambulance **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of \$3,200 for willfully and repeatedly violating Section 1.903(a) of the Rules.<sup>13</sup>

18. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.<sup>14</sup> Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email:

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<sup>11</sup> 47 U.S.C. § 312(f)(2).

<sup>12</sup> *AT&T Wireless Services, Inc.* 17 FCC Rcd 21866, 21871-76 (2002).

<sup>13</sup> 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 1.903(a).

<sup>14</sup> 47 U.S.C. § 504(a).

[ARINQUIRIES@fcc.gov](mailto:ARINQUIRIES@fcc.gov) with any questions regarding payment procedures.

19. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class Mail and Certified Mail Return Receipt Requested to Metro West Ambulance, at its address of record.

**FEDERAL COMMUNICATIONS COMMISSION**

Rebecca L. Dorch  
Regional Director, Western Region  
Enforcement Bureau